

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America,)
Plaintiff,) Civil Action No. 8:05-2734-HMH-BHH
vs.)
Robert Barnwell Clarkson, individually)
and d/b/a The Patriot Network,)
Defendant.)

)

This matter is before the Court on the defendants' motion to dismiss "under Rule 4(m)." In reality, it is a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5), as the defendants contend that the Patriot Network has not been properly served in this case. The motion must be denied because the Patriot Network has waived its right to raise such a defense by virtue of the Answer it filed on December 20, 2005, wherein the defense was not pled. See Fed. R. Civ. P. 12(h).

Regardless, Federal Rule of Civil Procedure 4(h) permits service of a complaint upon a corporation, partnership, or other unincorporated association by delivering a copy of the summons and complaint to an officer, a managing or general agent, or on an other authorized agent of the organization. See Fed. R. Civ. P. 4(h). Clarkson does not dispute that he personally received a copy of the summons and Complaint in October 2005 and does not dispute that, at the time, he was the president of the Patriot Network. (Special Appearance ¶¶ 1, 2.) The Patriot Network is fully aware of the matter before this Court and has already appeared by way of its Answer.

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, it is RECOMMENDED the plaintiff's motion to dismiss should be DENIED.

s/Bruce H. Hendricks
United States Magistrate Judge

August 3, 2006
Greenville, South Carolina